IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17299 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH GOPALBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17299 of 2003

MR PS GOGIA for Petitioner No. 1

MRS.FALGUNI PATEL for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 29/07/2004

ORAL JUDGEMENT

Rule. Mrs.Falguni Patel, learned AGP, waives service of rule on behalf of the respondents. At the joint request of the learned advocates for the parties,

the petition is taken up for final disposal today.

2. In the present petition, the petitioner challenges the legality of the order dated 4.7.2000 by which the complaint of the petitioner was not entertained as well as the orders dated 10.12.2002 and 3.2.2003 by which the requests of the petitioner for reconsidering the earlier decision were also turned down.

3. The short facts leading to the present petition are that the petitioner who was engaged by the respondent Nos.4 & 5 had sought to raise an industrial dispute for which purpose he approached the Assistant Labour Commissioner for conciliation with respect to his demand for being reinstated in service. The Assistant Commissioner of Labour, however, was pleased to reject the said application by his order dated 4.7.2000 on the ground that since the Bombay Civil Services Rules are applicable to the petitioner, no industrial dispute has arisen. Subsequently also, the demand of the petitioner to reopen the said issue at the end of the Assistant Labour Commissioner met with no success and by orders dated 10.12.2002 and 3.2.2003, the applications of the petitioner were rejected.

4. Appearing for the petitioner, learned advocate Shri Gogia submits that the Assistant Labour Commissioner has exceeded its jurisdiction and refused to conciliate and draw the report on the basis of said conciliation on extraneous considerations. It is his contention that the only power with the Assistant Labour Commissioner is to try and bring about a settlement between the parties after conciliation and if no such settlement is possible, to draw a failure report and report it to the appropriate Government. He, therefore, contends that the Assistant Labour Commissioner could not have refused to entertain the dispute of the petitioner by going into the merits of the case.

5. I find that the Assistant Labour Commissioner has committed illegality in passing the impugned orders whereby it is stated that since BCS Rules are applicable to the petitioner, there is no industrial dispute which has arisen. I find that under section 12 of the Industrial Disputes Act, the duties of the Conciliation Officer are set out, which include that of holding conciliation proceedings between the parties for the purpose of bringing about settlement of the disputes. The said section also provides that if settlement of the dispute is arrived at in the course of the conciliation proceedings, the Conciliation Officer shall send a report

thereof to the appropriate Government. Sub-section (4) of the said section provides that if no settlement is arrived at, the Conciliation Officer shall send to the appropriate Government a full report including the facts and circumstances relating to the dispute as also the reasons on account of which in his opinion, the settlement could not be arrived at. Under sub-section (5) of section 12 of the said Act, upon failure report being submitted by the Conciliation Officer under sub-section (4) of the said section, if the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court or Tribunal, it may make such a reference. From the plain reading of the said provisions of the Industrial Disputes Act, it is clear that the only power that vests with the Conciliation officer is that of holding the proceedings for the purpose of bringing about settlement of dispute between the parties and if no such settlement is possible, submit his report of failure to the appropriate Government. The Conciliation Officer does not have the power to adjudicate upon the dispute between the parties. It is held in number of decisions of the Hon'ble Supreme Court that even the appropriate Government, while considering the question whether an industrial dispute is to be referred for adjudication or not under section 10 of the Industrial Disputes Act, cannot adjudicate the issues and decide the lis between the parties (see AIR 1989 SC 1565 and AIR 1985 SC 860). If the appropriate Government cannot enter into the merits of the dispute sought to be raised by the workman, can a Conciliation Officer exercise such a power is the question and the answer has to be obviously in the negative.

6. Learned advocate for the petitioner points out a decision of the Bombay High Court reported in 2001 LLR 252 (Phillips Workers Union v. Phillips India Ltd., Thane and others). In the said decision, the Conciliation Officer had declined to admit the demand in conciliation of the trade union on the ground that there was a settlement between the parties. The High Court was pleased to hold that the Conciliation Officer could not determine the merits of the demands while declining to admit the dispute in conciliation. Consequently, it was directed that the Conciliation Officer should hold conciliation proceedings.

7. In the present case I find that the Conciliation Officer had misdirected himself in refusing to conciliate the issue on the ground that BCS Rules are applicable to the petitioner. What would be the effect of application of such Rules has got to be left for the competent

Industrial Tribunal or the Labour Court to decide in case ultimately the dispute is decided to be referred by the appropriate Government. The Conciliation Officer at this stage cannot terminate the dispute prematurely by refusing to conciliate between the parties.

8. Accordingly, the impugned orders dated 4.7.2000, 10.12.2002 and 3.2.2003 are quashed and set aside and the respondent No.2, Assistant Labour Commissioner, Rajkot is directed to hold conciliation proceedings and submit appropriate report in terms of section 12 of the Industrial Disputes Act as expeditiously as possible. With these directions, the petition stands disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)